IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 7290 of 2006

SMT.GEETA DEVI
V/S
CIVIL JUDGE (J.D.) & J.M.,JODHPUR & ORS.

Mr. ARJUN PUROHIT, for the appellant / petitioner

Mr. JK BHAIYA & Mr. ASHOK CHHANGANI, for the respondent

Date of Order : 3.7.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

By the impugned order, the learned trial court has dismissed in default, the petitioner's application for impleadment as party.

It is contended by the learned counsel for the petitioner, that arguments on the application had already been heard, and the case was posted for orders on 12.4.2006, after hearing arguments on 29.3.2006. Thereafter on 12.4.2006, defendant sought time, and the matter was adjourned. Then, on the adjourned day, the plaintiff's counsel expired, and plaintiff sought time to appoint another counsel. It is in this background, that the application was adjourned to 26.8.2006, for hearing, and on

that day it was dismissed in default.

Contention of the learned counsel for the petitioner is, that as a matter of fact, on his side arguments had already been advanced, and therefore, it was not necessary for him to appear, and the application could not have been dismissed in default.

Though technically speaking, the argument does not appeal to me, inasmuch as when the application was posted for arguments, the petitioner was also required to be present. Be that as it may. However, considering the totality of circumstances, in the interest of justice, I think it appropriate to direct the learned trial court, to decide the application on merits, and thereafter to proceed with the trial of the suit. It is clarified, that counsel for the petitioner need not be heard in support of the application. The writ petition is accordingly disposed of. At the same time the learned trial court is further directed to decide the main suit most expeditiously.

(N P GUPTA),J.

/Sushil/